

BEFORE THE BOARD OF SUPERVISORS, COUNTY OF SAN BENITO

**AN ORDINANCE ADOPTING THE
SURFACE MINING OPERATION
AND RECLAMATION PLAN CODE**

Ordinance No. 722

The Board of Supervisors of the County of San Benito ordains as follows:

SECTION 1. Chapter 6C of the San Benito County Code is repealed in its entirety.

SECTION 2. Chapter 6C is hereby added to the San Benito County Code to read as follows:

**CHAPTER 6C
SURFACE MINING OPERATIONS AND RECLAMATION**

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6C-1. Declaration of Intent:

The purpose of this chapter is to implement the provisions of the California Surface Mining and Reclamation Act of 1975 (Pub. Resources Code, Sect. 2710 et seq.). It is the intention of the Board of Supervisors to regulate surface mining operations so as to prevent or minimize the adverse environmental effects of surface mining; to provide for the reclamation of mined lands; to encourage the production and conservation of minerals; and to eliminate hazards to public health and safety.

6C-2. Definitions:

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

- a. Abandonment of a surface mining operation: The cessation of substantial activities of the surface mining operation. An operator is conclusively presumed to have abandoned the operation when there has been a cessation of substantial activities for a period of one year or more. However, a surface mining operation shall not be deemed abandoned if the operator complies with the provisions of section 6C-9 of this chapter.
- b. Alteration of a surface mining operation: Any substantial change in a surface mining operation from that specified in an approved reclamation plan.
- c. Borrow pit: Excavations created by the surface mining of rock, unconsolidated geologic deposits or soil to provide material (borrow) for fill elsewhere.
- d. Expansion of surface mining operation: Any substantial increase in the size or scope of a surface mining operation. Expansion includes, without limitation, engaging in surface mining operations beyond the boundaries specified in an approved reclamation plan, beyond the volume of materials specified in the reclamation plan, or the depth of excavation specified in the reclamation plan.
- e. Grading: To bring an existing surface to a designed form by cutting, filling, and/or smoothing operations.
- f. Haul road: A road along which material is transported from the area of excavation to the processing plant or stockpile area of the surface mining operation.
- g. Idle: Surface mining operations curtailed for a period of one year or more, by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.
- h. Legal nonconforming surface mining operation: A surface mining operation which was a valid land use for its location when it was created and which by ordinance enacted after that land use began is no longer conforming to current regulations.

- i. Mined lands: The surface, subsurface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located.
- j. Minerals: Any naturally occurring chemical element or compound, or group of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas and petroleum.
- k. Mining waste: The residual of soil, rock, mineral, liquid vegetation, equipment, machines, tools, or other materials or directly resulting from, or displaced by, surface mining operations.
- l. Operator: Any person who is engaged in surface mining operations, or who contracts with others to conduct operations on his/her behalf, except a person who is engaged in surface mining operations as an employee with wages as his/her sole compensation.
- m. Overburden: Soil, rock, or other materials that lie above a natural mineral deposit or in between mineral deposits, before or after the removal by surface mining operations.
- n. Person: Any individual, firm, association, corporation, organization or partnership, limited liability company, or the like, or any city, county, district or the state or any department of agency thereof.
- o. Reclamation: The combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition which is readily adaptable for alternate land uses and create no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures.
- p. Stream bed skimming: Excavation of sand and gravel from stream bed deposits above the mean summer water level or stream bottom, (thalweg) whichever is higher.
- q. SMARA Surface Mining and Reclamation Act.
- r. Surface mining operations: All, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations include, but are not limited to:

- i. in-place distillation or retorting or leaching;
- ii. the production and disposal of mining waste;
- iii. prospecting and exploratory activities;
- iv. borrow pitting, streambed skimming, and segregation and stockpiling of mined materials (and recovery of same).

A surface mining operation is an operation existing on one parcel or multiple adjacent parcels constituting a single integrated operation.

- s. Topsoil: The upper part of the soil profile that is relatively rich in humus, which is technically known as the A-horizon of the soil profile.

6C-3. Incorporation by Reference

The provisions of the Surface Mining and Reclamation Act (SMARA) Div.2, Chapter 9 (sec. 2710 et sec.) of the Public Resources Code (PRC, Section 2207, and state regulations title 14 Chapter 8 (sec. 3500 et. sec.) of the California Code of Regulation, as those provisions and regulations may be amended from time to time, are made a part of this chapter by reference with the same force and effect as if the provisions therein were specifically and fully set out herein, excepting that when the provisions of this chapter are more restrictive than correlative state provisions, this chapter shall prevail.

6C-4. Prohibition

Except as provided in this chapter, no person shall conduct surface mining operations unless a use permit, reclamation plan, and financial assurances for reclamation have first been approved by the County of San Benito for such surface mining operations pursuant to this chapter. Any applicable exemption from this requirement does not automatically exempt a project or activity from other state or local statutes, regulations, ordinances or policies including, but not limited to, the application of the California Environmental Quality Act (CEQA), conditions of approval of the use permit or other permits, the obligation to payment of development impact fees, or the imposition of other dedications and exactions. The provisions of this chapter shall apply to all lands within the County of San Benito, public and private.

6C-5. Exceptions:

The provisions of this Chapter shall not apply to the following activities, subject to the referenced exceptions:

- a. Excavations or grading conducted for farming or on-site construction or for the purpose of restoring land following a flood or natural disaster provided such activities are in compliance with the San Benito County Grading and Erosion Control Ordinance.
- b. One time prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of one acre or less
- c. On-site excavation and on-site earth moving activities which are an integral and necessary part of a construction project that are undertaken to prepare a site for

construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:

- i. All required permits for the construction, landscaping, or related land improvements have been approved by the county in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, CEQA, the County General Plan, and Zoning Ordinance.
- ii. The County of San Benito has approved the construction project, including the on-site excavation and on-site earth moving activities, pursuant to CEQA.
- iii. Surplus materials shall not be exported from the site unless and until actual construction work has commenced and all exportation shall immediately cease if the planning director determines that prior to completion of the construction project, the applicant has terminated, indefinitely suspended or is no longer actively pursuing construction activities.

6C-6 Vested Rights:

No person who obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit to mine, so long as the vested right has been exercised continuously without being abandoned and as long as no substantial changes have been made in the operation since the vested right was first obtained except in accordance with SMARA, state regulations, and this chapter. A person who has obtained a vested right to mine shall obtain county approval of a reclamation plan covering the mined lands disturbed by such subsequent surface mining conducted after January 1, 1976. In those cases where an overlap exists (in the horizontal and /or vertical sense) between pre and post-act mining, the reclamation plan shall call for reclamation proportional to that disturbance caused by the mining after the effective date of the act (January 1, 1976). All other requirements of state law and this chapter shall apply to vested mining operations.

6C-7 Processing of Application.

a. Applications:

- i. Filing fee: To obtain a use permit for a surface mining operation, a person shall file an application for such permit with the planning department. applications shall be accompanied by a fee in an amount to be set from time to time by ordinance of the board of supervisors.

ii. Form and Content:

- A. Applications for a use permit or reclamation plan for surface mining or land reclamation projects shall be made on forms provided by

the planning department. Said application shall be filed in accordance with this chapter and procedures to be established by the planning director. The forms for reclamation plan applications shall include, at a minimum, each of the elements required by SMARA (particularly Pub. Res. Code 2772-2773) and state regulations, and any other requirements necessary to facilitate an expeditious and fair evaluation of the proposed reclamation plan, shall be submitted to the planning department.

B. Applications shall include all required environmental review forms and information as specified on application forms.

C. For surface mining operations that are exempt from a use permits pursuant to this chapter, the reclamation plan application shall include information concerning the mining operation that is required for processing the reclamation plan. The applicant shall submit to the planning department all documentation required for the reclamation plan at one time. Applications shall include all required environmental review forms and information specified on application forms.

iii. Acceptance: The planning director shall not accept applications as complete until the applicant provides the required information in sufficient detail to allow the planning director or the director's designee to process the application. The planning director or the director's designee shall notify the applicant when the application is accepted as complete. Acceptance of an application shall not constitute approval of the project.

b. Procedure:

i. Early Consultation: Within thirty (30) days of the planning directors acceptance of an application for a use permit and/or a reclamation plan as complete, the planning director or director's designee will notify the State Department of Conservation that the application was filed. Whenever mining operations are proposed in the 100-year flood plain of any stream, as shown in zone A of the flood insurance rate maps issued by the Federal Emergency Management Agency, and within one mile, upstream or downstream, of any state highway bridge, the planning director will also notify the State Department of Transportation that the application was filed.

ii. Review:

A. The planning director or director's designee shall review the use permit and/or reclamation plan application for accuracy and completeness. In addition, the planning director or director's designee shall coordinate review of the application with other public agencies and shall process the application(s) through environmental review pursuant to CEQA and the county's environmental review guidelines.

B. Consultation with the State Department of Conservation: During the review process the planning director or director's designee shall give the State Department of Conservation (30) thirty days to review and comment on the Reclamation Plan application/amendment and forty-five (45) days to review and comment on the financial assurances.

C. Simultaneous Processing: In the event a use permit is required under the provisions of this chapter, the planning director or director's designee shall simultaneously review and process the reclamation plan application and financial assurances.

iii. Staff report: After the appropriate environmental review, the planning director will prepare a staff report with recommendations for consideration by the planning commission. The staff report shall include the State Department of Conservation's written comments and provide a written response describing the disposition for the major issues raised by the state. In particular, when the county objects to the state's recommendations and objections, the staff report shall address, in detail, why specific comments and suggestions were not accepted. The planning director shall forward copies of any written comments and the county's responses promptly to the applicant/operator prior to the planning commission meeting.

iv. Public Hearing: Upon completion of the environmental review process, interagency review and filing of all documents required by the planning director, the planning commission shall hold a public hearing to consider the applicant's request and to approve, conditionally approve, or disapprove the issuance of a use permit and/or reclamation plan and financial assurances.

v. Certification of compliance of Reclamation Plan and Financial Assurances with this ordinance and State law: The planning commission shall certify that the reclamation plan and/or financial assurances comply with the applicable requirements of state law, and submit the approved permit, plan, assurance, or amendments to the State Department of Conservation for review. If necessary to comply with permit processing deadlines, the planning commission may conditionally approve the use permits with the conditions that the mining operation shall not be activated until the State Department of Conservation completes its review of the cost estimates for financial assurances and the county has reviewed and approved the reclamation plan and financial assurances.

vi. Distribution of approved plans: The planning director or director's designee shall forward a copy of each approved use permit for mining operations and/or approved reclamation plan, and a copy of the approved financial assurances to the State Department of Conservation. By July 1 of each year, the planning director shall submit to the State Department of Conservation for each active or idle mining operation a copy of the site approval or reclamation plan

amendments, as applicable, or a statement that there have been no changes during the previous year.

c. Use Permit Findings: The planning commission shall approve or conditionally approve the use permit only if the evidence presented establishes:

i. That the use permit application and supporting documents describe the surface mining operation in adequate detail, and incorporate adequate measures to mitigate the probable or known significant environmental effects caused by the surface mining operation.

ii. That the surface mining operation is properly located in relation to the general plan and to the community as a whole, and to other land uses, transportation, and service facilities in the vicinity.

iii. That the surface mining operation, if it complies with all conditions upon which approval is made contingent, will not have substantial adverse affect on other properties in the vicinity or cause any substantial damage, hazard, or nuisance.

iv. That the use permit for surface mining operations will comply with the provisions of SMARA and state regulations.

d. Reclamation Plan Findings: The planning commission shall approve or conditionally approve a reclamation plan only if the evidence presented establishes:

i. That the reclamation plan describes the surface mining operation in adequate detail and complies with SMARA, particularly Sections 2772 and 2773.

ii. That the reclamation plan complies with the requirements of applicable state regulations.

iii. That the reclamation plan and potential use of reclaimed land pursuant to the plan are consistent with this chapter, the County of San Benito's General Plan, and any applicable resource plan or element.

iv. That the planning commission reviewed the potential environmental impacts of the proposed reclamation plan, pursuant to CEQA and the County of San Benito's environmental review guidelines, and that all significant adverse impacts from reclamation of the land following completion of surface mining operations are mitigated to the maximum extent feasible.

v. That the land and/or resources such as water bodies to be reclaimed will be restored to a condition that is compatible with and blends with the surrounding natural environment, topography, and other resources, or that suitable off-site improvements will compensate for related disturbance to resource values.

vi. That the reclamation plan incorporates adequate measures to restore the mined lands to a naturally appearing or usable condition that is consistent with the general plan and applicable resource plan or element and that is compatible with adjacent land uses.

vii. That the planning director provided a written response to the State Department of Conservation, describing the disposition of major issues raised by that department. Where the county disagrees with the recommendations and objections raised by the State Department of Conservation, said response shall address, in detail, why specific comments and suggestions were not accepted.

e. Use Permit Conditions of Approval

i. Use Permit: The planning commission shall provide that issuance of the use permit shall be contingent upon acceptance and observance of specified conditions reasonably related to surface mining operations.

ii. Commencing Operations: An operator shall commence a surface mining operation not later than one (1) year from the date of issuance of the operations permit. Failure to commence operations within the one (1) year time period renders the use permit void. This section shall not apply to those surface mining operations which comply with the provisions of section 6C-9 of this chapter relating to notice of non-abandonment of surface mining operations.

f. Reclamation Plan Conditions of Approval

i. The planning commission shall provide that approval of the reclamation plan shall be contingent upon acceptance and observance of specified conditions reasonably related to surface mining operations. Those conditions shall include but not be limited to, the conditions specified in paragraph (ii) and (iii).

ii. Flood Control Easements: As another condition of approval of the reclamation plan of a surface mining operation located in a watercourse, the operator shall convey to the county, or its successor in interest, an easement in perpetuity for flood control purposes which will protect the future mineral resources from waste. The easement includes, without limitation, the right to clear the river channel of debris. The interest collected on the financial assurances may be used to pay for the county's cost of maintaining the easement.

iii. Financial Assurances/Security to Guarantee Performance of Reclamation Plan:

Any person conducting a surface mining operation, or who has conducted a surface mining operation subsequent to January 1, 1976, shall provide to the county planning department financial assurances to ensure that reclamation is performed in accordance with the surface mining operation's approved reclamation plan. The amount of the

financial assurance must be adequate to ensure that the county or state can reclaim the site pursuant to that approved plan. The mine operator shall enter into a written agreement and post accompanying security for financial assurances to insure that the county or state can cause the reclamation of the disturbed portion of the site in accordance with the approved plan.

(A) To ensure that reclamation will proceed in accordance with the approved reclamation plan, the county shall require, as a condition of approval, security which will be released upon satisfactory performance. The applicant may post security in the form of cash, a surety bond, trust fund, irrevocable letter of credit from an accredited financial institution, or other method acceptable to the county and the State Mining and Geology Board as specified in state regulations, and which the county reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan. Financial assurances shall be made payable to the county and the State Department of Conservation. To ensure liquidity and availability of the assurance, the first twenty-five thousand-dollars of security shall be posted in cash.

(B) Financial assurances shall ensure compliance with elements of the reclamation plan, including, but not limited to, revegetation and landscaping requirements, restoration of aquatic or wildlife habitat, restoration of water bodies and water quality, slope stability and erosion and drainage control, disposal of hazardous materials, and other measures, if necessary.

(C) The operator shall submit cost estimates for the financial assurances to the planning department for the planning director's review and approval prior to the operator securing financial assurances. The planning director shall forward a copy of the cost estimates, together with any documentation received supporting the amount of the cost estimates, to the State Department of Conservation for review. If the State Department of Conservation does not comment within 45 days of receipt of these estimates, the cost estimates shall be deemed adequate, unless the county has reason to determine that additional costs may be incurred. The planning director shall have the discretion to approve the financial assurance if it meets the requirements of this chapter, SMARA, and state regulations.

(D) The operator shall base the amount of the financial assurances upon the estimated costs of reclamation for the years or phases stipulated in the approved reclamation plan, including any maintenance of reclaimed areas as may be required, subject to adjustment for the actual amount required to reclaim lands disturbed by surface mining activities occurring since January 1, 1976 and the actual amount required to reclaim new lands to be disturbed by surface mining activities in the upcoming year. A California registered professional engineer and/or other similarly licensed and qualified professionals retained by the operator and approved by the planning director shall prepare the cost estimates based on an analysis of physical activities necessary to implement the approved reclamation

plan, the unit costs for each of these activities, the number of units of each of these activities, and the actual administrative costs. Financial assurances to guarantee revegetation, restoration of water bodies, restoration of aquatic or wildlife habitat, and any other applicable element of the approved reclamation plan shall be based upon cost estimates that include, but may not be limited to, labor, equipment, materials, mobilization of equipment, administration, and a reasonable profit by a commercial operator other than the mine operator or land owner. A contingency factor of ten percent (10%) shall be added to the cost of financial assurances.

(E) In projecting the costs of financial assurances, it shall be assumed without prejudice or insinuation that the surface mining operation could be abandoned by the operator, requiring the county or State Department of Conservation to contract with a third party commercial company for reclamation of the site. Accordingly, the cost estimate shall reflect fees charged by commercial operator, other than the mine operator, to perform reclamation activities in the locality.

(F) The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed (including any maintenance required).

(G) The planning director shall adjust annually the amount of financial assurances required of a surface mining operation to account for new lands disturbed by surface mining operations, inflation, and any final reclamation of lands accomplished in accordance with the approved reclamation plan. The financial assurances shall include estimates regarding the cost of reclamation for existing conditions and anticipated activities during the upcoming year, except that the operator may not claim credit for reclamation scheduled for completion during the coming year.

(H) The operator shall submit revisions to financial assurances to the planning director each year prior to the anniversary date for approval of the financial assurances. The financial assurance shall cover the cost of reclaiming existing disturbed areas and the cost of activities anticipated for the next calendar year, including any required interim reclamation. If revisions to the financial assurances are not required, the operator shall explain, in writing, why revisions are not required.

(I) All operators of surface mining operations shall be required to enter into a reclamation agreement on a form provided by San Benito County. The county shall insure the prompt and complete implementation of the reclamation plan. The agreement shall further provide for the annual security of an amount equal to the estimated annual reclamation costs plus a contingency of ten percent (10%) of this amount. The interest earned on the cash deposited with the county shall be retained by county to insure long-term compliance of surface mining operations with reclamation.

iv. Statement of Responsibility: The operator/owner submitting the financial assurances for the reclamation plan shall sign a statement accepting responsibility for reclaiming the mined lands in accordance with the approved reclamation plan, which statement shall be maintained in the planning department's file for the mining operation. Upon sale or transfer of the operation, the new operator shall submit a signed statement of responsibility to the planning department for placement in the permanent record.

g. Modification, Revocation of Reclamation Plans: A reclamation plan approved before or after the effective date of this ordinance may be modified or the reclamation plan as a whole, may be revoked, only if the reclamation activities do not comply with the plan or if there is a compelling public necessity. A compelling public necessity warranting the revocation of a reclamation plan may exist where the reclamation activities constitute a public nuisance, or where the plan itself is inadequate under the Act or this ordinance. The planning department shall monitor the reclamation activities and reclamation plans annually or periodically as necessary, in accordance with this paragraph. The procedure to modify and/or revoke a Reclamation Plan shall be the same as provided in 6C-7 (iv).

h. Amendments. An operator may submit amendments to an approved reclamation plan, detailing proposed changes to the plan to the planning department at any time. The county shall approve such amendments in accordance with the procedures for approval of reclamation plans described in this chapter. An approved amendment to a reclamation plan shall not be considered an alteration or expansion per se of an approved use permit or of a legal non-conforming surface mining operation.

6C-8 Existing Reclamation Plans Findings:

The board of supervisors finds that any reclamation plans approved prior to the effective date of this chapter which are inadequate or incomplete create a danger of flooding, erosion, air, water and noise pollution, destruction of wildlife habitat, and impairment of the aesthetic environment. These dangers in turn threaten the health and safety of persons as well as the existence and security of public and private property. Consequently, the board of supervisors declares that inadequate or incomplete reclamation plans are a public nuisance. The board of supervisors further declares that reclamation plans are inadequate or incomplete if they fail to contain all information required by the applicable state statutes or regulations or by this chapter, or if they fail to provide adequate security to guarantee performance therewith.

a. Security to Guarantee Performance of Reclamation Plans. To insure the performance of a reclamation plan approved prior to the effective date of this ordinance so as to prevent or eliminate a public nuisance, operators of all surface mining operations with reclamation plans approved prior to the effective date of this ordinance shall enter into agreements with the county to guarantee performance of the reclamation plans. The agreements shall be governed by the requirements of paragraph (iii), above.

6C-9 Interim Management Plans

a. Abandonment Ends Right to Operate. No surface mining operation whether existing before or after the effective date of this ordinance, with or without a permit, shall have the right to continue if the operator abandons the surface mining operation. However, there shall be no determination of abandonment if an operator submits an interim management plan as specified in this section.

i. Within 90 days of a surface mining operation becoming idle or before the expiration of one year following issuance of a use permit, the operator shall submit to the planning department a proposed interim management plan (IMP) and shall give notices of non-abandonment specified in sub-section vi in order to avoid the determination of abandonment. The proposed IMP shall fully comply with the requirements of SMARA, including but not limited to all use permit and reclamation plan conditions, and shall provide measures the operator will implement to maintain the site in a stable condition, taking into consideration public health and safety. The proposed IMP shall be submitted on forms provided by the planning department, and shall be processed as an amendment to the reclamation plan. IMPs shall not be considered a project for the purposes of environmental review.

ii. Financial assurances for idle operations shall be maintained, as though the operation was active, or as otherwise approved through the idle mine's IMP.

iii. Upon receipt of a complete proposed IMP, the planning department shall forward the IMP to the State Department of Conservation for review at least 30 days prior to approval by the planning commission.

iv. Within 60 days of receipt of the proposed IMP, or a longer period mutually agreed upon by the planning director and the operator, the planning commission shall review and approve or deny the IMP in accordance with this Chapter. If the planning commission denies the proposed IMP, the operator shall submit a revised IMP within thirty (30) days of denial, or a longer period mutually agreed upon by the operator and the planning director. The planning commission shall approve or deny the revised IMP within sixty (60) days of receipt. If the planning commission denies the revised IMP, the operator may appeal that action to the board of supervisors.

v. The IMP may remain in effect for a period not to exceed five years, at which time the planning commission may renew the IMP for another period not to exceed five years, or require the surface mining operator to commence reclamation in accordance with its approved reclamation plan.

vi. Notice of Non-Abandonment: Notice of non-abandonment shall be included as a condition of approval for an IMP and the operator shall be responsible for filing with the planning department an affidavit averring to

compliance with the notice requirements. The notices of non-abandonment shall be completed on a form provided by the planning department and shall be:

- A. Filed with the planning department
- B. Annually published at least three (3) times a week in a newspaper of general circulation with the County of San Benito for four (4) consecutive weeks;
- C. Recorded with the county recorder;
- D. Mailed to owners of property located within 500 feet of the surface mining operation property; and
- E. Posted thirty (30) days each year in locations approved by the planning director.

6C-10. Development Standards for Surface Mining Operation:

The following are standard conditions for surface mining operations, which shall apply to all surface mining operations unless specifically modified by the planning commission.

- a. Appearance: Surface mining shall be operated in a neat and orderly manner, free from junk, trash, or unnecessary debris. Buildings shall be maintained in a sound condition, in good repair and appearance. Weeds shall be cut as frequently as necessary to eliminate fire hazards. Salvageable equipment stored in a non-operating condition shall be suitably screened or garaged.
- b. Setbacks:
 - i. Cut slopes shall be a minimum of 25 feet distant from adjoining property lines, except where adjoining property is being mined, and a minimum of 40 feet from any right of way of any public street or official plan line or future width line of a public road. The planning commission may establish greater setbacks when it deems them to be appropriate, based on factors such as site conditions or proposed mining operations.
 - ii. When surface mining occurs in a canyon area which abuts an urban area or the ridgeline is visible from the valley floor, the top the uppermost cut area shall be as shown in an approved reclamation plan.
- c. Noise and Vibration:
 - i. Noise and ground vibration shall be reduced to a minimum. To achieve this, loading points shall not be located closer than 50 feet from any property line, unless otherwise permitted by the planning commission.

- ii. Noise attenuation measures shall be installed where necessary to reduce noise levels in order to comply with noise standards of the county general plan.
 - iii. Screening and rock crushing shall be noted in the permit application and subject to planning commission conditioning.
- d. Explosive Use: Use of explosives in operations shall be noted in the permit application and subject to planning commission conditioning. When the planning commission finds that the use of explosives (blasting) is the only logical method of loosening natural material for the purpose of removal, such method shall be noted in the conditions of approval.
- e. Traffic Safety:
- i. The site shall provide adequate space for the parking, queuing and loading of trucks, as well as packing of employee vehicles to minimize the traffic problem to residents on neighboring streets.
 - ii. Haul roads shall be designed where possible so as to stay away from property lines.
 - iii. The use permit shall specify the haul routes on public roads. Should any truck operating from a surface mining operation creates a hazard to life or property, the planning director shall declare the surface mining operation a nuisance and set a revocation hearing before the planning commission.
 - iv. The use permit shall specify the number and location of access points, subject to approval by the planning commission. If required, acceleration and deceleration lanes which meet county standards shall be provided.
 - v. The use permit shall specify an approved surface for the access road for a distance of not less than 100 feet from the public road right-of-way line into the area of operation in order to minimize the deposit of dirt and gravel from trucks onto the public roads. During hauling operations, the operator shall remove any spillage of materials on public roads promptly and completely.
- f. Dust Control: Surface mining operations shall be conducted so as to reduce the occurrence of dust to a minimum in compliance with the regulations of the Monterey Bay Unified Air Pollution Control District currently in effect or subsequently adopted which are hereby incorporated by reference. Unless otherwise specified by the planning commission, operations shall be conducted in accordance with the following minimum standards.
- i. The operator shall maintain access roads in a reasonably dust free condition by paving, oiling, watering, or chemically treating the access roads from public thoroughfares to a point not less than 100 feet from the point at which

haulage vehicles are being loaded.

ii. The operator shall maintain areas used for the movement of haulage vehicles and mobile equipment closer than 100 feet from the public road to the point at which haulage vehicle are being loaded by sprinkling such areas with oil or water or chemically treating such areas as frequently as necessary to reduce the stirring of dust to the minimum level possible.

iii. The operator shall conduct activities likely to raise dust, including but not limited to, dozing, digging, scraping and loading of excavated materials, in a manner which reduces dust to the minimum level possible. Sprinkling shall be done where necessary to comply with this standard.

iv. The operator shall sprinkle stockpiles and screen operations or any part of the facilities as necessary to reduce dust.

g. Hours and Days of Operation:

i. The use permit shall limit the hours of operation for the surface mining operation to daylight hours, excluding Sundays or holidays. However, the planning commission may alter this standard where conditions of density and proximity would warrant liberalization or restriction.

ii. In cases of public emergency, the planning director may temporarily waive restrictions regarding hours and days of operation. In cases of private emergency, the planning director may authorize reasonable and necessary repairs to the equipment and limited operations required to restore normal by issuing a temporary permit for periods up to and including 56 hours, but not to exceed one week total, allowing the temporary waiver of restrictions regarding hours and days of operation.

h. Fencing and Posting: The planning commission shall require for those portions of an excavation are where public safety requires fencing. The planning commission may require posting in other portions of the excavation area.

i. Where excavation is authorized to proceed in stages, the operator may limit fencing to the area already excavated. The operator shall provide adequate fencing to exclude unauthorized dumping.

ii. The planning commission may require the enclosure of all or a portion of an excavation by an approved fence either along the property line or the periphery of the excavation where deemed necessary for public safety by the planning commission. Such fence shall not be closer than 10 feet to the top edge of any cut slope. All fences shall have suitable gates at access points, which shall be securely locked during hours and days of non-operation.

iii. Fencing shall be a four-strand barbed-wire unless otherwise provided by the planning commission.

iv. The operator shall post signs conspicuously along the periphery of the property in such a manner and at such intervals as will give reasonable notice to passersby of the matter contained in such notice. Such signs shall state by in letters no less than four inches tall "WARNING; COMMERCIAL SURFACE MINING OPERATION CONDUCTED ON THESE LANDS" both in English and Spanish.

i. Screening:

i. Operators shall provide screening for surface mining operations to secure the use and enjoyment of nearby properties.

ii. Acceptable methods of screening shall include, but not be limited to, installation of berms, fences plantings of suitable shrubs and trees, which shall be placed and maintained in order to minimize visibility of cut slopes, mining operations and equipment from public view.

iii. Operators may place and maintain screening along the streets and exterior property lines or the perimeter of the visible portions of the site being operated, so long as the screening satisfies the objectives of this subsection.

j. Health and Sanitation: The operator shall maintain any body of water created during operations within the mining operation in such a manner as to provide for mosquito control and to prevent the creation of health hazards or public nuisances.

k. Protection of Streams and Water Bearing Aquifers:

i. Operators shall conduct surface mining in a manner so as to keep adjacent streams, percolation ponds, or water bearing strata free from undesirable obstruction, silting, contamination or pollution of any kind. The objective is to prevent discharges, which would result in higher concentrations of silt than existed in off-site water prior to mining operation. The regulations of the Regional Quality Control Board currently in effect or subsequently adopted are hereby incorporated by reference.

ii. The operator will minimize the removal of vegetation and overburden in advance of surface mining.

iii. The operator shall manage stockpiles of overburden and minerals to minimize water and wind erosion. Stockpiling in the river channel is forbidden.

iv. The operator shall construct and manage erosion control facilities including, but not limited to detention basins, settling ponds (desilting and energy dissipaters), ditches, streambank stabilizers and dikes so as to control erosion.

v. Where operations are in stream channels or are located in areas that are sufficiently proximate to stream channels so as to allow to directly effect stream channels, all operations shall conform to the operation plan approved by the planning commission. The operation plan shall require the operator to do the following:

A. maintain the location of the approved channel.

B. avoid increasing the gradient of the stream.

C. finish side slope of the lawful channel no later than October of each year.

D. remove all debris and vegetation growth from the center channel by October 1 of each year.

E. mitigate erosion adjacent to the mining operation both upstream and downstream of the mining operation (e.g., by installing blocking walls, riprap, etc.).

F. maintain, wherever practicable, a filter strip of an appropriate width and consisting of undisturbed soil, with riparian vegetation, or its equivalent, between areas significantly disturbed by surface mining operations and any watercourse, lake, bay, estuary, marsh or other water body.

vi. The county may adopt from time to time plans to mitigate the effects of mining on the river. The operator shall comply with such plans.

1. Permits: Applicants shall comply with applicable laws.

m. Silt Prevention: The planning commission may restrict mining operations in the natural or artificially enlarged channel of any river, creek, stream or natural or artificial drainage channel when such mining may result in the deposit of silt therein.

n. Ground Water Protection: The operator shall ensure that surface mining operations which may penetrate near or into usable water-bearing strata including, without limitation, wells, shall not reduce the transmissivity or area through which water may flow, unless the operator first provides approved equivalent transmissivity or area elsewhere, and shall not subject such groundwater basin or sub-basin to significant pollution or contamination.

o. Staging: The operator may conduct reclamation in stages compatible with continuing operations, or on completion of all excavation, removal, or fill as approved by the planning commission. The operator may reclaim the land for agricultural, residential,

commercial, industrial, open space and recreational, or any other appropriate use.

p. Overburden: The salvage of existing topsoil is an important factor in revegetation and thus is a crucial part of the reclamation process. Topsoil is a valuable asset and the operator shall segregate it for future use in revegetation. The planning commission may require the operator to conduct soil survey to allow the planning commission to determine the appropriate use of top soil in post-mining rehabilitation and to determine whether the types of vegetation being proposed in the reclamation plan are appropriate.

q. Final Slope Gradient:

i. When designing the proposed steepness and treatment of the mined lands' final slopes, the operator consider the physical properties of the slope material, landscaping requirements and other factors. The maximum stable slope angle might range from 90 degrees in a sound limestone, igneous rock, or similar hardrock to less than 20 degrees in highly expansive clay. In all cases, reclamation plans shall specify slope angles flatter than the critical gradient for the type of material involved.

ii. The operator shall eliminate dangerous contours caused by operations from the land surface of the excavated area and shall fill mine shaft openings or otherwise secure them in a manner so as to eliminate dangerous conditions.

iii. The operator shall ensure that the slopes of excavations made to a water-producing depth shall not be steeper than 1-1/2 feet horizontal to 1 foot vertical for areas from 5 feet above the water line to the bottom of the excavation below the water line, unless otherwise specifically permitted.

iv. The operator shall prepare an engineering analysis of slope stability whenever final slopes approach the critical gradient for the type of material involved. The analysis shall place special emphasis on slope stability and design when final slope gradient may affect public safety or adjacent property.

v. Based upon the maximum stable slope angle of the material involved, the planning commission may at the time of approval or modification of the reclamation plan, specify the slope of the reclaimed land surface, require grading or backfilling, and require the elimination of unnatural steps or benches. The planning commission shall take into account the environmental and/or technological feasibility of any such requirement or specification, but such considerations may be overridden when the planning commission determines that the public health, safety or welfare require.

r. Erosion and Drainage. The operator shall design grading and revegetation to prevent excessive erosion and to convey surface runoff to natural drainage courses or interior basins designed for water storage. The operator may create lakes, ponds, streams or other bodies of water within an excavation only when authorized by the approved

reclamation plan approved. The operator shall treat final surfaces so as to prevent erosion unless otherwise specifically permitted by the planning commission.

s. Resoiling:

i. When the reclamation plan calls for resoiling, the operator shall level coarse hard mine waste and cover it with a layer of finer material or weathered waste and place a soil layer on this prepared surface. The operator shall remove toxic material. Operators of surface mines that did not salvage soil during their initial operations shall attempt, where feasible, to upgrade remaining native materials. The operator shall use soil conditioners, mulches or imported topsoil where revegetation is part of the reclamation plan and where such measures appear necessary to ensure successful revegetation. The operator shall not denude adjacent areas of soil for purposes of reclaiming areas disturbed by surface mining operations for any such denuded area must in turn be reclaimed.

ii. The operator shall address reclamation of any area mined to produce additional materials for backfilling and grading in the reclamation plan.

iii. The operator shall address settlement of filled areas in the reclamation plan. Where probable ultimate site uses include roads, building sites or other improvements sensitive to settlement, the reclamation plan shall provide for compaction of the fill materials in conformance with good engineering practice to avoid excessive settlement.

t. Replanting:

i. Within six months after surfaces have been graded to their final contours, or within such other time period as is approved by the planning commission, the operator shall take suitable measures to establish vegetation capable of stabilizing the soil on areas where revegetation is possible and rock isn't exposed. The planning commission shall approve vegetation types and the operator shall maintain the vegetation until the soil is adequately stabilized to withstand the elements and shall provide irrigation when necessary.

ii. When the operator proposes to conduct surface mining operations in stages of a series of benches, the planning commission may require the operator to landscape each bench or group of benches upon completion of excavation on the particular bench or benches.

iii. The operator shall use available research regarding revegetation methods, the selection of species having good survival characteristics and the climate of this area. The operator shall use native species wherever practicable and may use screens and roadside plantings at mines currently in operation, where such screens and plantings are practicable and desirable.

u. Removal of Structures, Equipment and Stockpiles.

i. The operator shall remove all structures, equipment and stockpiles, except required fences, from areas disturbed by surface mining operations excavations six months after termination of operations, or such other time period as determined by the planning commission.

ii. Within the same period, the operator shall remove individual sewage disposal systems in accordance with the county health department's recommendations.

v. The planning commission may impose additional performance standards developed either during environmental review of individual projects or through the formulation and adoption of countywide performance standards.

w. The operator shall initiate reclamation activities on those portions of the mined lands that will not be subject to further disturbance at the earliest possible time. The county may require the operator to conduct interim reclamation of mined lands that have been disturbed and that may be disturbed again in future operations. The operator may conduct reclamation on an annual basis, in stages compatible with continuing operations, or on completion of all excavation, removal, or fill, as approved by the County of San Benito. Each phase of reclamation shall be specifically described in the reclamation plan and shall include

- i. the beginning and expected ending dates for each phase;
- ii. all reclamation activities required;
- iii. criteria for measuring completion of specific reclamation activities;
- iv. estimated costs for completion of each phase of reclamation

6C-11. Legal Non-conforming Surface Mining operations

a. Continuance, expansion and alteration: Subject to the limitations expressed in this chapter and in SMARA, the operator of a legal non-conforming surface mining operation may continue the operation without obtaining an operations permit but the legal non-conforming surface mining operation shall not be expanded or altered.

b. Reclamation Plan: The operator of a legal non-conforming surface mining operation shall not continue such operation without obtaining an approved reclamation plan in accordance with the provisions of Section 6C-7, above.

6C-12. Public Records:

Reclamation plans, reports, applications, and other documents submitted pursuant to this chapter are public records, unless the operator demonstrates to the satisfaction of the planning director

that the release of such information, or part thereof, would reveal production, reserves, or rate of depletion entitled to protection as proprietary information. The planning director shall identify such proprietary information as a separate part of the application and shall make such information available only to county staff, the state geologist, or to persons authorized in writing by the operator. However, the planning director will comply with any order to release such information issued by a court of competent jurisdiction.

6C-13. Annual Report Requirements:

Surface mining operators shall forward an annual surface mining report to the State Department of Conservation and to the county planning department on a date established by the State Department of Conservation, upon forms furnished by the State Mining and Geology Board. New mining operations shall file an initial surface mining report and any applicable filing fees with the State Department of Conservation within 30 days of permit approval or before commencement of operations, whichever is sooner. The operator shall forward any applicable fees, together with a copy of the annual inspection report, to the State Department of Conservation at the time of filing the annual surface mining report.

6C-14. Periodic Inspection:

As a condition of approval of either the use permit or reclamation plan, the planning commission shall establish a periodic inspection schedule for the planning director to evaluate compliance with the approved use permit or reclamation plan, financial assurances and state regulations. A fee for such inspections shall be set from time to time by ordinance of the board of supervisors, and the remittance thereof shall be deemed a condition of either the use permit or the reclamation plan.

The planning director shall use forms provided by the State Mining and Geology Board for the inspection report and shall forward the inspection report and any supporting documentation to the State Department of Conservation within (30) thirty days of the completion of the inspection. The planning director shall conduct no fewer than two inspections per year for each surface mining operation with at least one inspection occurring within six months of receipt of the annual report required in section 6C-13.

6C-15. Appeals:

Any person aggrieved by an act or determination of the planning director or the planning director's staff made under this chapter may appeal such decision to the planning commission. Any person aggrieved by an act or determination of the planning commission made under this chapter may appeal such decision to the board of supervisors. Such appeal shall be governed by the requirements of Chapter 18, Article XVII (a) of the County Code.

6C-16. Insurance:

All surface mining operations, shall continually carry a public liability insurance policy in the amount of at least \$1,000,000.00 per person and at least \$4,000,000.00 per incident and property damage in the amount of at least \$100,000.00. The County of San Benito shall be named as additional insured in said policy and shall be furnished a certificate of insurance. Such policy of insurance shall provide for a 30-day notice to the county of cancellation by carrier in the event of cancellation of said policy.

6C-17. State and Federal Law:

This chapter shall be interpreted to be consistent with all provisions of state and federal law applicable to surface mining operations in San Benito County, whether such exists on the date this ordinance becomes operative or subsequently thereafter.

6C-18. Enforcement:

- a. Violation-Criminal Penalties: Any person violating any provisions of this chapter is guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in chapter 19 (Code Enforcement) of the San Benito County Code and Public Resources Code Sections 2774.1 and 2774.2.
- b. Violation-Public Nuisance: Any violation of this chapter is unlawful and a public nuisance and shall be abated, eliminated and enjoined as provided in chapter 19 (Code Enforcement) of the San Benito County Code and Public Resources Code Sections 2774.1 and 2774.2.
- c. Remedies-Cumulative: Except as otherwise provided by law, the remedies in this chapter are cumulative and not exclusive. Nothing in this chapter is intended or shall be deemed or construed to limit or impair the ability of the county, or any of its officers, agents or employees, to take any administrative or judicial action, otherwise authorized by law, to abate any public nuisance. Chapter 19 (Code Enforcement) of the San Benito County Code and Public Resources Code Sections 2774.1 and 2774.2 are hereby incorporated by reference as though its provisions were fully set forth herein
- d. Enforcing Agency: The planning director or his or her designee shall enforce the provisions of this chapter.

6C-19.0 Mineral Resource Protection:

- a. The county encourages the development of surface mining operations in compatible areas before encroachment into areas with conflicting land uses. Areas that have been classified by the State Department of Conservation's Division of Mines and Geology or designated by the State Mining and Geology Board, as containing mineral resources, as well as existing surface mining operations remain in compliance with the provisions of this chapter, shall be protected from intrusion by incompatible land uses that may impede or preclude mineral extraction or processing, to the extent possible for consistency with the San Benito County General Plan.
- b. In accordance with Public Resources Code 2762, the county will update the San Benito County General Plan and resource maps to reflect mineral information (classification and/or designation reports) within 12 months of receipt of such information from the State Mining and Geology Board. Land use decisions within the county shall be guided by information provided on the location of identified mineral resources of regional significance. The county shall consider and encourage conservation

and potential development of identified mineral resource areas. The county shall require, as a condition of approval for any development project within an area classified or designated as containing mineral resources, that the applicant record on the property title a notice identifying important mineral resources. Prior to approving a use that would otherwise be incompatible with mineral resource protection, the county may impose conditions of approval on encroaching development projects to minimize potential conflicts.

Section 3. Severability:

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. The board of supervisors hereby declares that it would have enacted this chapter and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 4. Validity:

If any section, sentence, or phrase of this chapter is for any reason held by a court to be invalid, such decision shall not effect the validity of the remaining portions of this chapter.

Section 5. Publication:

This ordinance shall take effect thirty (30) days after the passage of this ordinance. Prior to the expiration of fifteen (15) days from the final passage hereof, the Clerk of the San Benito County Board of Supervisors shall cause this ordinance to be published in a newspaper of general circulation in the County of San Benito.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Benito, State of California, at the meeting of said board on the 13th day of April, 1999 by the following vote:

AYES: SUPERVISORS: R. Place, B. Cruz, R. Bowling, R. Rodrigues, R. Scagliotti
NOES. SUPERVISORS: None
ABSENT: SUPERVISORS: None
ABSTAIN: SUPERVISORS: None

By: _____


Chair, San Benito County Board of Supervisors

4/13/99

ATTEST:

John R. Hodges

John R. Hodges, Clerk of the Board

APPROVED AS TO LEGAL FORM:

Steven R. Sanders 2/17/99

Steven R. Sanders, County Counsel

By: *Sally Wong*, Deputy

This is a true and correct copy of the original on file in this office, and passed by the Board of Supervisors on:

APR 13 1999

MAY 21 1999

ATTEST:
JOHN R. HODGES, County Clerk and ex-officio Clerk of the Board of Supervisors, San Benito County, Calif.

By: *Linda Churchill* Deputy